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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.N. a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.N., Defendant and Appellant.	E071335 (Super.Ct.No. J276183) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed.

Melissa A. Chaitin, by appointment of the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

M.A. (mother) and C.N. (father) shared custody of their daughter, A.N. (child). When the child was staying with the father, his adult brother touched her more than once in ways that would have constituted the crime of a lewd act against a child, but for the fact that the brother had Down syndrome. There was evidence that the father was aware of the touching and failed to prevent it from recurring — hence this dependency.

The juvenile court found that it had jurisdiction. At disposition, it removed the child from the father's physical custody, gave sole physical custody to the mother (who had recently moved to Texas), and terminated its jurisdiction.

The father appeals. Finding no error, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *Events Before the Dependency*.

When the parents met, the father was 18 and the mother was 14. Four months later, he impregnated her. By the time the dependency was filed, in 2018, the father was 24, the mother was 21, and the child was 5.

The father lived with his mother, along with his brother S.H. (uncle). The uncle had Down syndrome. He walked around the home naked or in underpants. He played with Barbie dolls, making them "hump[]" each other. He watched sexually explicit television shows and listened to sexually explicit music. When the mother's sister met him once, he was "twerking." The father's mother "would clap and cheer him on."

The mother stayed sometimes with her mother and sometimes with the father and his mother. At some point, the mother's mother, sister, and nephews all moved to Texas. Thereafter, the mother stayed first with friends, then with a roommate, and then with the father and his mother again. Eventually, however, because there was "too much conflict," she left and went to stay with other relatives of the father. She wanted to move to Texas to live with her mother. However, she admitted having "mixed feelings" about the move, because it would mean the child would see the father less.

In 2016, the mother filed a request for a domestic violence restraining order against the father; a temporary restraining was issued, but her request for a permanent restraining order was dismissed, for reasons not reflected in the record.

Later in 2016, in a family law proceeding, the court gave the parents joint legal custody and joint physical custody.[1] The child was to stay with the father on weekends and with the mother the rest of the time.

B. *Events Giving Rise to the Dependency*.

In 2017, the child told the mother's mother "that she had a secret, that [the uncle's] weenie touched me." The mother's mother told the mother, and the mother asked the child what happened. The child said, when she was taking a shower, the uncle took his clothes off, got in the shower, pulled her close to him, and touched "her back near her bottom" with his penis.

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[1] Thus, the juvenile court found the father to be a presumed father.

The mother called the police. As a result, Children and Family Services (CFS) investigated. The child said that the father's mother bathed her and the uncle together. When the father and his mother agreed not to let them bathe together, the social worker closed the case.

On April 14, 2018, the father's adult brother I.H. saw the uncle rubbing the child's crotch, over her clothing.[2] He yelled at the uncle and hit him to make him stop.

I.H. told both the father and the father's mother what had happened. The father responded by telling the child she was not supposed to be in the uncle's room. The father's mother responded by "kick[ing] [I.H.] out of the house."

I.H. also told his girlfriend, who told the mother. The mother immediately called the police. She then called the father and asked why he had not told her about the incident. He replied, "[You] blow things out of proportion." When she told him she had called the police, he said, "[D]o what you got to do[,] stupid bitch," and hung up on her.

When the police responded, the father's mother "was adamant that no such thing could happen and there were no problems and nothing to report." She claimed both I.H. and the mother were "crazy."

The father told police "that he did not believe the incident had happened and that [the child] was not in any danger and was completely safe with [the uncle]."

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[2] It is not clear whether this occurred in the child's room, the uncle's room, or a front room.

I.H. told police that the uncle "ha[d] the ability to know right from wrong but . . . family members had not taught [him]."

An officer interviewed the child. She said "if anyone had told [the officer] anything bad had happened then they were lying . . . ." This led the officer to suspect that she had been coached by the father's mother.

The police called in CFS.[3]

On April 16, 2018, the child told the mother that the uncle "put his private part on my back." She added that the father's mother had "told her to say nothing happened so they wouldn't take [the uncle] away."

On April 19, 2018, the mother filed a request, in family court, for temporary emergency orders. The court denied the request, "pending the hearing in . . . Dependency Court."[4]

According to the mother, the father had threatened to retaliate against her, and she was afraid for her safety. She said he had been abusive, "but it was more emotional and verbal than physical." He was jealous and controlling. However, she admitted that there had been some "physical abuse."

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[3] The investigation had its awkward moments. The social worker reported: "The paternal grandmother said [the uncle] . . . is so large that his penis could not possibl[y] touch [the child]. She introduced the undersigned to [the uncle] . . . . He was sitting in his bedroom watching TV with a shirt on and his underwear. The grandmother beckoned the undersigned to look at his penis by holding up his shirt, exposing his belly. The undersigned declined . . . ."

[4] This is puzzling, as a dependency petition had not been filed yet.

The father admitted just one instance of domestic violence. As he described it, during an argument or struggle over his cell phone, "[The mother] threw my hand down really hard, so I pushed her back."[5]

C. *The Forensic Interview.*

On May 10, 2018, a social worker conducted a forensic interview of the child. This time, the child admitted that the uncle had "humped" her — i.e., rubbed his penis on her back — while making a "grunting" sound. This had happened twice — once in her room and once in the uncle's room.

The second time, I.H. saw it happen; he yelled at the uncle to stop and punched him. She told the father; later, the father said to his mother, "Mom, it's happening again." According to the child, the father's mother told her "if she disclosed she would be taken away."

Once again, the father said he did not believe the allegations. He also said he did not want to move out of his mother's home if he did not have to. The father's mother said the mother "was making up everything," and I.H. "does drugs . . . and is a liar."

D. *The Dependency Proceedings.*

On May 15, 2018, CFS detained the child from the father, placed her with the mother, and filed a dependency petition as to her. At the social worker's suggestion, the mother entered a domestic violence shelter.

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[5] Somewhat inconsistently, his counsel later represented that "[the mother] lunged at father, grabbed his jaw. . . . [He] did push mother out of the room."

One month later, in the report for the jurisdictional/dispositional hearing, the social worker recommended that the mother be given custody of the child and that the case be dismissed.

A social worker assessed the mother's mother's home in Texas and determined that it was appropriate.

In July 2018, the juvenile court authorized the mother to move with the child to Texas, "pending [the] next hearing." She did so.

In September 2018, at the jurisdictional/dispositional hearing, the juvenile court sustained jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)) and sexual abuse (Welf. & Inst. Code, § 300, subd. (d)), finding it true that both parents had engaged in domestic violence with each other, and that the father had failed to protect the child from sexual abuse.

At disposition, the father's counsel asked the court to "keep the case open with . . . reunification [services] to both parents." She argued that the father no longer presented a risk to the child, because he had moved out of the home and he was engaging in services.

The juvenile court removed the child from the father's custody and placed her with the mother. It entered an exit order giving the parents joint legal custody but giving the mother sole physical custody. It allowed the father to have supervised visitation if he was in Texas, and Skype calls if he was not. It then terminated its jurisdiction.

II

VIOLATIONS OF APPELLATE BEST PRACTICES

Preliminarily, CFS argues that the father's opening brief fails to set forth all of the relevant evidence and fails to set forth the applicable legal standards. It asks us to deem all of his contentions forfeited.

It is true that, when the substantial evidence standard of review applies, "an appellant must '"demonstrate that there is no substantial evidence to support the challenged findings." . . . [Citations.]' [Citation.] 'A recitation of only [appellant's] evidence is not the "demonstration" contemplated under the above rule. [Citation.] Accordingly, if, as [appellant] here contend[s], "some particular issue of fact is not sustained, [appellant is] required to set forth in [his] brief all the material evidence on the point and not merely [his] own evidence. Unless this is done the error is deemed to be [forfeited]." [Citations.]' [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 414-415, italics omitted.)

Appellant's counsel — an experienced appellate practitioner — has provided us with a long and adequate statement of facts. If a statement of facts were to set forth *every* potentially relevant fact in the record, it would be tedious and time-wasting.[6] Good attorneys need some leeway to find a happy medium between the two extremes. CFS identifies a handful of additional facts that it claims should have been included; partisan

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[6] CFS's own brief errs on the side of including considerable irrelevant information.

advocates, however, will necessarily disagree as to what is relevant. CFS's remedy is to provide any missing fact in its own brief, not to play "gotcha."

We also recognize that "'[p]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's . . . issue as waived.' [Citation.]" (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1138.) However, appellant's opening brief does so. CFS criticizes it for discussing the propriety of removal under Welfare and Institutions Code section 361, subdivision (c)(1), which deals with a risk to the child's physical or emotional well-being, rather than subdivision (c)(4), which deals with a risk of sexual abuse. Once either risk has been established, however, the standard for removal is essentially the same. CFS also criticizes it for not citing Welfare and Institutions Code section 361.2, which CFS then argues is controlling. As we will discuss in part VI, *post*, however, this is simply wrong. Welfare and Institutions Code section 361.2 does not apply.

III

JUSTICIABILITY

CFS also contends that "most" of the father's contentions (it does not specify which) are not justiciable. Primarily, it argues that his contentions are moot in light of the juvenile court's termination of jurisdiction.

It relies on *In re Michelle M.* (1992) 8 Cal.App.4th 326. There, the juvenile court issued jurisdictional and dispositional orders; the father appealed. A month later, it terminated its jurisdiction; the father did not appeal. (*Id.* at pp. 327-328.) The appellate

court held that the appeal was moot, because the order terminating jurisdiction had become final (*id*. at pp. 328-330): "[W]e have no jurisdiction to act upon any order. There is no ongoing dependency proceeding . . . . It has been terminated." (*Id*. at p. 329.)

We may assume, without deciding, that *Michelle M.* is good law. (But see Code Civ. Proc., § 908; *Ulkarim v. Westfield LLC* (2014) 227 Cal.App.4th 1266, 1282.) Even if so, this case is self-evidently distinguishable. Here, the father did appeal from the order terminating jurisdiction; thus, it is not final, and we have jurisdiction to reverse it, if appropriate.

In re Tomi C. (1990) 218 Cal.App.3d 694, which CFS also cites, is off point for essentially the same reason. There, in a family law proceeding, the mother was awarded custody of the children. (*Id*. at p. 697.) Thereafter, the social services agency filed a dependency petition, alleging that both parents had molested the children. (*Id*. at p. 696.) Eventually, however, it determined that only the father had molested them, and they did not need protection from the mother; it therefore dismissed the dependency. (*Id*. at pp. 696-697.) The appellate court concluded: "[F]ather has failed to establish that he has been aggrieved by the dismissal. [Citation.] Even if father could have successfully defended against the allegations in the petition, he could not thereby regain custody of his children since the custody issue had already been decided in family court." (*Id*. at p. 698.) Here, again, the father appealed from the exit order, and we have jurisdiction to reverse it.

CFS also raises four additional arguments, in shotgun fashion, as to why the appeal is moot and/or the father is not aggrieved. They are all frivolous.

First, it argues: "[The father's appeal] has not challenged the lower court's jurisdiction . . . , and . . . the nature of those allegations support the . . . removal of [the child] from his custody." This presumes that, once jurisdiction has been established, the only appropriate disposition is removal, regardless of whether the conditions that led to the dependency still exist. If so, why do we have disposition hearings? This is simply not the law. (See Welf. & Inst. Code, § 361, subds. (c), (d).)

Second, it argues: "Reunification services are a benefit; a parent is not constitutionally entitled to services." The father, however, may be *statutorily* entitled to services. More important, he is arguing that he was entitled to an *opportunity* to reunify, during a reunification *period*, without regard to services.

Third, it argues: "[T]ermination of a dependency is less intrusive than an open dependency." However, if termination means losing custody, whereas an open dependency means at least a chance of regaining custody, that is not true.

Fourth, it argues: "[The father] can engage in services on his own and make requests for changes in custody in the family law court." In a dependency, however, unlike in family court, reunification services are free. In most cases, an attorney is also free (see Welf. & Inst. Code, § 317, subd. (b)); the father had appointed counsel here. Moreover, in a dependency, unlike in a family law custody proceeding, the father would have the benefit of a presumption that the child should be returned to his custody, unless

CFS carries its burden of proving that return would be detrimental. (Welf. & Inst. Code, §§ 366.21, subds. (e)(1), (f)(1), 366.22, subd. (a)(1).)

To put it in a nutshell: A lower court cannot insulate an erroneous dispositional order from appeal by following it up with an exit order and/or an order terminating jurisdiction.

We therefore conclude that the father is aggrieved, and the appeal is not moot.

IV

REMOVAL OF THE CHILD FROM THE FATHER'S CUSTODY

The father contends that the juvenile court erred by removing the child from his custody.

At disposition, a child may be removed from the custody of a parent with whom the child resides based on any one of several alternative grounds, which must be shown by clear and convincing evidence. (Welf. & Inst. Code, § 361, subd. (c).) One of these is if "[t]he minor . . . has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a . . . person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent . . . ." (*Id*., subd. (c)(4).)

"'We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]' [Citations.]" (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1115-1116.) "' . . . "[O]n appeal

from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" [Citation.]' [Citation.]" (*In re J.*S. (2014) 228 Cal.App.4th 1483, 1492-1493.)[7]

Here, the child had been sexually abused by the uncle while in the father's home. The father knew there was a risk that the uncle would sexually abuse the child. He would have seen the uncle's sexual acting-out. He had told the child not to go in the uncle's room. There had been a previous incident of sexual abuse in 2017, which led to a CFS investigation. After the 2018 incident of sexual abuse that led to the dependency, he said, "Mom, it's happening again."

In addition, there was substantial evidence that there was no way to protect the child short of removal. After the 2017 incident, the father had done nothing to protect the child. Basically, he left it up to her to protect herself, by telling her not to go in the uncle's room. The uncle, however, evidently was not confined to his room; at least one incident took place in the child's own room.

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[7] Some courts disagree. They hold that "'[t]he standard of review of a dispositional order on appeal is the substantial evidence test, "bearing in mind the heightened burden of proof."' [Citations.]" (*In re Madison S.* (2017) 15 Cal.App.5th 308, 325.) It suffices to say that the difference between these two standards of review is so attenuated that the result in this case would be the same under either standard.

Most important, both the father and the father's mother were in denial. They simply refused to believe the disclosures, not only by the child, but also by I.H. When the mother told the father she had called the police, he called her a "stupid bitch" and hung up on her. When I.H. told the father's mother what had happened, she kicked him out of the house and called him crazy. I.H. reported that the uncle was capable of learning right from wrong, but the family had failed to teach him.

In May 2018, when the child was first detained, the social worker gave the father referrals to parenting classes, anger management classes, domestic violence classes, and counseling. As of the jurisdictional/dispositional hearing in September 2018, he had taken only parenting classes, and he had not completed those.

This was substantial evidence that, if the child were left in the father's custody, she would be at substantial risk of being sexually abused.

The father argues that, by the time of the dispositional hearing, he had moved out of his mother's home. However, there was no *evidence* of this. His counsel merely *asserted*, "Father moved out of the house." "It is axiomatic that the unsworn statements of counsel are not evidence. [Citations.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 413, fn. 11.) As CFS points out, the father's address of record was still his mother's house.[8] Certainly there was no evidence as to where else he was living — much less how likely he was to continue living there.

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[8] He even used his mother's address on his notice of appeal.

Even if true, this fell short of an assurance that the father would prevent the child from being in the uncle's presence. The social worker found the father to be angry and uncooperative. For example, when she told him his phone conversations with the child (in which he disparaged the mother and CFS) were "inappropriate," he responded, "That's my daughter, I can talk to her about whatever I want."

There was evidence that he was tied to his mother's apron strings. At the age of 24, he was still living with her. The social worker reported that he was "very bonded" to his mother and that she "overly influenced" him. He refused to move out if he did not have to. In the opinion of I.H.'s girlfriend, who "had known the family for many years," the father's "life is his mother's. If you are with him, you are with his mother." His mother's sway over him, when combined with his own state of denial, constituted substantial evidence that merely moving out of his mother's house was not adequate to protect the child.

The father also argues that the juvenile court should have used less restrictive means, such as (1) unannounced home visits, (2) requiring him to participate in counseling, or (3) ordering him not to allow the child to have any contact with the uncle or with his mother. Unannounced home visits, however, would not show whether he was taking the child to his mother's home. The social worker had advised him to obtain counseling and had given him referrals for it, but he had not done so; even if he did, it would take time to work. And the father's denial and noncooperation suggested a propensity to disobey orders.

Last but not least, the asserted error was clearly harmless. Because the mother wanted to move to Texas, the juvenile court had to make a custody determination in any event. It determined that the mother should be given sole physical custody and should be allowed to move to Texas. In part V, *post*, we will uphold this determination. The child was also properly removed from the father's custody for this reason.

V

ALLOWING THE MOTHER TO MOVE TO TEXAS WITH THE CHILD

The father contends that the juvenile court erred by giving the mother sole physical custody and allowing her to move, with the child, to Texas.

"Once a [dependency] petition has been filed . . . , the juvenile court has exclusive jurisdiction of all issues regarding custody and visitation of the child . . . ." (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 102; see also Welf. & Inst. Code, § 304; see also Cal. Rules of Court, rule 5.620(a).)

Welfare and Institutions Code section 362.4 authorizes the juvenile court "'to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.'" (*In re Chantal S.* (1996) 13 Cal.4th 196, 203.) "'We normally review the juvenile court's decision to terminate dependency jurisdiction and to issue a custody . . . order pursuant to section 362.4 for abuse of discretion [citation] and may not disturb the order unless the court """exceeded the limits of legal discretion by making an arbitrary, capricious, or

patently absurd determination [citations].”””’ [Citation.]” (*In re M.R.* (2017) 7 Cal.App.5th 886, 902.)

“A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.” (Fam. Code, § 7501, subd. (a).)

The juvenile court could not order the mother not to move to Texas. (*In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1581-1582 [“Courts cannot order individuals to move to and live in a community not of their choosing.”].) Its only options were to: (1) order the mother not to take the child to Texas (see, e.g., *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1334); (2) give the father (or someone else) custody of the child; or (3) allow the mother to move to Texas with the child.

Changing custody was not a realistic option. Under the circumstances — including its finding that the child had to be removed from the father’s custody for her protection — there was no possibility that the juvenile court was going to give custody to the father. And there was certainly no possibility that it was going to remove custody from *both* the mother and father.

There was substantial evidence that moving to Texas with the mother would be better for the child than remaining in California. While in California, the mother had no permanent housing; she was staying in a domestic violence shelter. By contrast, in Texas, she would be living in her mother’s home. A social worker had inspected it, and had found it to be “child friendly,” with amenities such as a school, a park, a pool, and a

playground nearby. In California, the mother was not working or going to school; in Texas, it seemed likely that she would be able to further her education and/or to find work. Both mother and child would have the support and the companionship of the mother's family — not only her mother, but also her sister and nephews.

Finally, if the juvenile court did enjoin the mother from moving with the child, it had to face the possibility that she might choose to move anyway. In that event, it had no good alternative custody options in California. Thus, even if this outcome was unlikely, the court could reasonably choose not to force the issue.

The father argues that the move was not in the child's best interest because it would impair her relationship with him. However, the evidence did not compel the juvenile court to find that this relationship was particularly beneficial to the child. Whenever she was at his home, it was actually his mother who cared for her. Meanwhile, he played video games "for hours," "late into the night," wearing headphones and avoiding talking to anyone; he did not get up until noon. In any event, the juvenile court did allow him to have in-person visitation as well as Skype calls.[9] Significantly, he never argued below that he would not be able to go to Texas for visits. Even now, he claims only that visitation in Texas would be a "financial burden."

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[9] In a one-sentence argument, the father claims the juvenile court erred by ordering that his visitation be supervised. It explained, however, that it was doing so because he had not yet completed domestic violence classes, parenting classes, or counseling. We fail to see why this was an abuse of discretion.

The juvenile court therefore did not abuse its discretion by allowing the mother to move to Texas with the child.

VI

TERMINATING THE DEPENDENCY

The father contends that the juvenile court erred by terminating its jurisdiction.

CFS responds that the juvenile court could and did place the child with the mother under Welfare and Institutions Code section 361.2, subdivision (a), and therefore it was authorized to terminate jurisdiction under Welfare and Institutions Code section 361.2, subdivision (b)(1).

Welfare and Institutions Code section 361.2, subdivision (a) requires the juvenile court to "determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child." If there is, it requires the juvenile court to place the child with that parent, unless it finds that such placement would be detrimental.

Under Welfare and Institutions Code section 361.2, subdivision (b), "[i]f the court places the child with that parent," it may make other specified orders, including an order giving that parent custody and terminating jurisdiction. (*Id.*, subd. (b)(1).)

In other words, this statute authorizes the juvenile court to terminate jurisdiction only if it places the child with a noncustodial parent. Here, under a previous family law

order, both parents had joint legal and physical custody.[10] Thus, Welfare and Institutions Code section 361.2 is irrelevant and unhelpful. (*In re Carl H.* (2017) 7 Cal.App.5th 1019, 1038.)

At a dispositional hearing, the juvenile court has the "authority . . . , in an appropriate circumstance, . . . to terminate dependency jurisdiction when the child is in parental custody and no protective issue remains. [Citations.]" (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 207, fn. omitted.) This is true even though it has already found jurisdiction. (*Id.* at pp. 211-212.) Indeed, it is true even "when the parent with whom the child remains has been found to be an offending parent." (*Id.* at p. 211; see also *id.* at p. 209.)

The juvenile court's statutory authority to issue exit orders gives it "discretion to impose necessary limitations on an offending parent's contact with a dependent child before terminating its jurisdiction. [Citation.] If no substantial risk of harm exists once those restrictions are in place, and ongoing supervision is unnecessary, termination of jurisdiction is appropriate. [Citation.]" (*In re Destiny D., supra,* 15 Cal.App.5th at p. 208.)

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[10] Admittedly, according to the clerk's minute order, it found that the mother was a "previously *non-custodial* parent . . . ." (Italics added.) This is plainly a clerical error. CFS had recommended a finding that the mother "is the other custodial parent." And, according to the reporter's transcript, the juvenile court did find "that the mother was also a custodial parent . . . ."

It is not clear whether the standard of review applicable to an order terminating jurisdiction is substantial evidence (e.g., *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1014) or abuse of discretion (e.g., *In re A.J.* (2013) 214 Cal.App.4th 525, 535, fn. 7). Of course, a ruling that is not supported by substantial evidence is an abuse of discretion, by definition. (*Borissoff v. Taylor & Faust* (2004) 33 Cal.4th 523, 531.) Accordingly, if only out an excess of caution, we apply the arguably higher abuse of discretion standard.

Here, under the juvenile court's exit orders, the child was in the physical custody of the mother. The focus of the dependency was sexual abuse by the uncle. The only concern about the mother's parenting was that she had been the perpetrator and victim of domestic violence. The record showed only a single incident of domestic violence,[11] and it was minimal, consisting only of pushing and grabbing. There was no evidence that the child was present when any domestic violence occurred. Moreover, the mother had not been entirely non-protective. In 2016, she did seek a restraining order against the father. Although she lived with the father, off and on, ultimately she moved out because there was "too much conflict."[12] The social worker conceded that, with regard to domestic violence, the mother "appears to be protective of her daughter . . . ." Meanwhile, the mother had moved to Texas, where she was living with her mother, who could help

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[11] In 2015, CFS received a report that the father and mother had been in "at least 3 physical altercations"; however, this report was evaluated as unfounded.

[12] Later, when the sexual abuse occurred, the mother was extremely protective. She called the police, who alerted CFS. She also filed a request in family law court for a temporary emergency custody orders.

protect the child; the father was living in California, and in any event, he was allowed only supervised visitation. Thus, there was no reason to suppose that they would engage in any future domestic violence.

At the start of the dependency, the social worker suggested that the mother move to a domestic violence shelter, and she complied. She had been attending classes, including classes in domestic violence awareness. Staff at the shelter "was very complimentary about the mother participating in their programs and counseling . . . ."

The father states that the mother had not *finished* her classes. However, this is not clear. In July 2018, the social worker reported, "[The mother] *is finishing* her classes at the domestic violence shelter." (Italics added.) It is fairly inferable that she did finish them before moving to Texas, or at least, that she substantially finished them. The social worker reported that "[s]he has benefitted from services pre-jurisdiction" — which is what counts.

This constituted substantial evidence that the mother did not present a current risk to the child. Moreover, such a conclusion was not arbitrary, capricious, or patently absurd.

The father notes that, at the jurisdictional/dispositional hearing, the mother's counsel asserted that the mother was "nonoffending." Given the domestic violence finding against her, this was not true. However, there is no indication that this misled the juvenile court. It had found the domestic violence allegation against the mother to be true less than three transcript pages earlier.

The father argues that he should have been given an opportunity to reunify with the child. However, "[t]he goal of dependency proceedings is to reunify a child with at least one parent. That goal has been met when a child is placed with a former custodial parent and afforded family maintenance services at disposition. [Citation.] The court should not keep a case open and refuse to issue an exit order just to give the parent from whose custody the child was taken 'a chance' to receive services. [Citation.]" (Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2019) § 5.34, p. 374.)

The father in *In re Destiny D.* argued, similarly, that "termination of jurisdiction . . . effectively denied him reunification and/or enhancement services vital to repairing the rupture in his relationship with Destiny." (*In re Destiny D.*, *supra*, 15 Cal.App.5th at p. 212.) The appellate court disagreed: "Because [the child] remained with her custodial parent, [the father] was not entitled to reunification services. [Citations.] [¶] . . . The Department was ordered to provide [the father] with referrals for services at the detention hearing. Whether or not to continue jurisdiction in order to permit [the father] to participate in additional services, given Destiny's safe placement with [the mother], was a decision for the court. [The father] has not shown the court's rejection of his request for some form of . . . services was arbitrary, capricious or patently absurd. [Citation.]" (*Id.* at pp. 212-213.)

Here, likewise, because the child was placed with a custodial parent, the father was not entitled to reunification services. (Welf. & Inst. Code, § 16507, subd. (b); *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19-21.) His counsel did not request family

maintenance services. (See Welf. & Inst. Code, §§ 362, subd. (c), 16506, subd. (a).) Even if she had, it would not have been an abuse of discretion to deny them, because the child was in a safe placement with the mother.

VII

DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.